

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Andrew Valencia
Serial No.: 10/695,199
Filing Date: October 28, 2003
Confirmation No.: 4522
Group Art Unit: 2616
Examiner: Christine Y. Ng
Title: OPTIMIZING QUEUING OF VOICE
PACKET FLOWS IN A NETWORK

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

REQUEST FOR PRE-APPEAL BRIEF REVIEW

In response to the Advisory Action issued March 20, 2008, Applicant respectfully requests a Pre-Appeal Brief review of this Application so that the rejection of the claims and the objections to the Application can be reconsidered prior to submission of an Appeal Brief.

REMARKS

This Request for Pre-Appeal Brief Review is being filed in accordance with the provisions set forth in the Official Gazette Notices of July 12, 2005 and January 10, 2006. Pursuant to the Official Gazette Notices, this Request for Pre-Appeal Brief Review is being filed concurrently with a Notice of Appeal. Applicant respectfully requests reconsideration of the Application in light of the remarks set forth below.

Claims 1-6, 10-18, 20, and 26-30 currently stand rejected under 35 U.S.C. §102(b) as being anticipated by Gilbert. Claims 9 and 21-25 currently stand rejected under 35 U.S.C. §103(a) as being unpatentable over Gilbert in view of Limb, et al. Claims 7, 8, and 19 are allowed. In the prosecution of the present Application, the Examiner's rejections and assertions contain clear errors of law, including a failure to establish a *prima facie* case of obviousness. To assist the Panel in the review of this Request for Pre-Appeal Brief Review, Applicant submits the following brief summary for consideration.

In the Advisory Action of March 20, 2008, the Examiner states that the Gilbert patent modifies the packet by removing silence samples or replicating silence samples and that such modification reads on the term 'fragmentation' used in the claimed invention. The Examiner asserts that the insertion of silence samples into a single audio packet by the Gilbert patent fragments the single audio packet into two packets. There is no basis from within the Gilbert patent to support the examiner's assertion. The Gilbert patent specifically states that the audio packet is modified and that the modified packet is then played. See col. 6, lines 5-7 and lines 41-44, of the Gilbert patent. At no time does the Gilbert patent

disclose any capability to fragment its audio packet into two or more fragmented packets. The Examiner readily admits that the data packet format in the Gilbert patent has changed. However, the Examiner jumps to an unsupported conclusion that two packets are generated by the Gilbert patent when a single audio packet is modified. The Gilbert patent merely adjusts the audio data carried in its audio packet through removal or insertion of silence samples as needed and then plays the single audio packet as modified. Accordingly, the Gilbert patent cannot support a rejection of the claimed invention as asserted by the examiner.

Most notable of the legal errors present in the examination of the Application is a failure of the Final Action of December 12, 2007 to establish a *prima facie* case of anticipation of the claims rejected under 35 U.S.C. §102(b). There has been no showing by the Examiner that each and every limitation of the claimed invention is disclosed in the Saito, et al. patent. Independent Claims 1, 11, 16, and 26 recite in general an ability to determine pauses in encoded information of a packet flow, fragment a packet in the packet flow into two or more fragmented packets, and adjust fragmentation of packets in the packet flow in response to the encoded information including a pause. By contrast, the Gilbert patent merely discloses removing silence samples from or replicating silence samples to an audio data packet. The Gilbert patent clearly states that it modifies the received audio data packet by adding or removing silent samples therefrom for subsequent playback. There is no capability provided in the Gilbert patent to create two or more packets from its audio data packet. The Gilbert patent merely adds information to or removes information from, in the form of silence samples, the received audio packet. Though the

Gilbert patent discloses modifying the packet with the addition or removal of silence samples therefrom, there is no fragmentation of the packet into two or more packets. No additional packets are created during this process by the Gilbert patent from the received audio packet. A single audio data packet is received in the Gilbert patent and, though possibly modified, a single audio data packet is then provided therefrom. Thus, the Gilbert patent does not disclose any capability to fragment a packet into two or more fragmented packets let alone an ability to adjust the fragmentation of packets as required by the claimed invention. Therefore, Applicant respectfully submits that Claims 1-6, 10-18, 20, and 26-30 are not anticipated by the Gilbert patent.

As a result, the Gilbert patent is insufficient to support a rejection of Independent Claims 1, 11, 16, and 26. For similar reasons, the associated dependent claims are also not anticipated by the Gilbert patent. In addition, the rejections to Claims 9 and 21-25 in further view of the Limb, et al. patent are not supported by the cited prior art in view of the deficiencies in the Gilbert patent noted above. Therefore, Applicant respectfully submits that the claims are patentably distinct from the prior art cited by the Examiner.

CONCLUSION

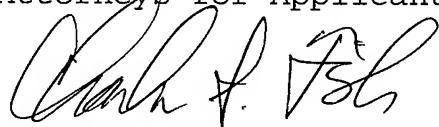
Applicant has now made an earnest attempt to place this Application in condition for allowance. For the foregoing reasons and for other apparent reasons, Applicant respectfully requests allowance of all pending claims.

The Commissioner is hereby authorized to charge any fees or credit any overpayments to Deposit Account No. 02-0384 of BAKER BOTTS L.L.P.

Respectfully submitted,

BAKER BOTTS L.L.P.

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April 14, 2008

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